IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 20 OF 2002

1. Special Land Acquisition
Officer (South Goa),
Konkan Railway Corporation
Limited, Amey Guest House,
Davorlim Road, P. O. Navelim,
Salcete, Goa, 403 707, and

2. Chief Engineer, Konkan
Railway Corporation Ltd.,
Rawnfond, near Margao
Railway Station, Margao,
Goa. ..... Appellants.

Versus

1. Sm. Champavati Vaikunt Dessai,
Pansulem, Canacona, Goa. ..... Respondent.

Mr. E. Afonso, Advocate for the appellants.

Mr. P.A. Kamat, Advocate for the respondent.

CORAM : A. P. LAVANDE, J.

DATE : 29TH APRIL, 2005

ORAL JUDGMENT

By this appeal, the appellants challenge Judgment and Award dated 20.07.2001, passed by the Additional District Judge III (South) Margao in Land Acquisition Case No.216/95.

2. By Notification dated 24/07/1991, the Government acquired large chunks of land for Konkan Railway Corporation Ltd.. An area of 4380 sq. metres, bearing Survey Nos. 56/9, 50/6, 48/21 and 53/1 of Village Nagorcem Palolem, in which the respondent had interest was part of the acquired land. The respondent claimed 50 % share from survey No. 56/9 having an area of 300 sq. metes, survey No. 50/6 having an area of 565 and survey No. 48/21 having an area of 250 sq. metres which were paddy fields and 1/3 rd share from Survey No.53/1 admeasuring 3265 sq. metres which was a coconut garden. The Special Land Acquisition Officer, by his Award dated 9.12.1993, awarded Rs.9/- per sq. metre for paddy fields and Rs. 17/- per sq. metre for the coconut garden.

3. Being dissatisfied, the respondents sought reference claiming compensation at the rate of Rs.150/- per sq. metre. The reference Court enhanced the compensation in respect of paddy fields from Rs.9/- per sq. metre to Rs.24/- per sq. metre, and in respect of the coconut garden from Rs.17/- to Rs.30/- per sq. metres relying upon the Award dated 15.3.1989. The reference Court relied upon the Award dated 15 th March, 1989 of the Special Land Acquisition Officer. The said Award was in respect of land acquired for an

approach road to Talpona Galgibag bridge in Canacona Taluka in respect of an area of 1,34,400 sq. metres acquired by Notification dated 30.4.1986 issued under Section 4 (1) of the Act.

4. The only point for determination which arises in the present appeal is whether the compensation fixed by the reference Court in respect of the paddy fields at the rate of Rs.24/- per sq. metre and in respect of the coconut garden at the rate of Rs.30/- per sq. metre is justified and, if not, what is the compensation payable in respect of the acquired lands ?

5. Mr Afonso, learned Counsel appearing for the appellants submitted that the lands involved in this case being agricultural lands, had no building potential and, therefore, the reference Court ought to have rejected the reference. According to the learned Counsel, the acquired lands were paddy fields except Survey No.53/1 which was a coconut garden. According to the learned Counsel, the respondent in this appeal had not led any evidence to establish that she was entitled to higher compensation than the one fixed by the Special Land Acquisition Officer. Mr. Afonso further submitted that granting 10% increase every year taking the Award dated 15th March, 1989 as basis is unwarranted since in places like

Canacona there could not have been 10% rise in the value of the lands every year and secondly, the acquired lands were agricultural lands and coconut garden, and, as such, the value of the said lands could not have increased every year by 10 %.

6. Per contra, Mr. Kamat, learned Counsel appearing for the respondent submitted that the reference Court was absolutely justified in relying upon the Award dated 15th March, 1989 and granting 10 % increase every year in respect of the acquired lands. According to the learned Counsel, the acquired lands had good potential and were similar to the lands which were subject-matter of the Award dated 15th March, 1989 and, therefore, no interference is called for by this Court against the impugned Judgment and Award.

7. I have considered the submissions made by the learned Counsel appearing for the parties. In so far as the submission of Mr. Afonso that the reference Court ought not to have relied upon the Award dated 15th March, 1989 is concerned, I am unable to agree with the submission inasmuch as the Award was in respect of similar lands situated in the proximity of the acquired lands and, therefore, the reference Court was absolutely justified in relying upon the said Award in fixing the market rate of the acquired lands. However, I find considerable merit in the submission of Mr. Afonso that the reference

Court ought not to have granted 10 % increase every year, in respect of paddy fields, that too on compounding basis, since the lands were situated at Nagarcem-Palolem in Canacona Taluka and the applicant before the reference Court had not led any evidence that the prices of paddy fields increased by 10 % every year. Moreover, in other connected appeals, under the same notification dated 24.7.1991, I have awarded Rs.19/- per sq. metre in respect of the paddy fields by granting increase of 5 % every year. Considering the fact that the lands are paddy fields and are situated in Canacona Taluka, in my view, increase of 5% and not 10% every year would be justified. Accordingly, the respondent is entitled to increase of 5% every year from 1986. Therefore, the compensation in respect of the acquired lands (paddy fields) comes to Rs.18.75 per sq. metre. I deem it appropriate to round it up to Rs.19/- per sq. metre.

8. In so far as Survey No.53/1, which was a coconut garden is concerned, in my opinion, the reference Court was also justified in placing reliance upon the said Award dated 15th March, 1986, since the acquired land was similar to land involved in the said award, in respect of which the market rate was fixed at Rs.20/- per sq. metre. In so far as increase of 10 % every year granted by the reference Court, in my opinion, since the acquired land was

coconut garden and not paddy field, the reference Court was justified in granting 10 % increase every year and fixing the compensation at the rate of Rs.30/- per sq. metre. The paddy fields cannot be compared to coconut gardens when it comes to yearly increase of value. As such, I am unable to accept the submission of the learned Counsel for the appellants that the reference Court was not justified in granting 10 % increase every year.

9. In view of the above discussion, the market rate in respect of the paddy fields is fixed at Rs.19/- per sq. metre and in respect of the coconut garden, the same is fixed at Rs.30/- per sq. metre. Needless to mention that the respondent would be entitled to all the statutory benefits under the Act. The respondent shall be also entitled to 50 % of the enhanced compensation in respect of the paddy fields and 1/3rd share of the enhanced compensation in respect of the coconut garden, as claimed by her.

10. In the result, therefore, the appeal is partly allowed in the aforesaid terms. The Award passed by the reference Court stands modified accordingly. The parties are directed to bear their own costs.

A.P. LAVANDE, J.

ssm.